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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY M. WEISMANTEL

Appeal 2009-003011
Application 10/053,935
Technology Center 3600

Decided: June 11, 2010

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
ANTON W. FETTING, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Gregory N. Weismantel (Appellant) seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1, 2, 6, 7, and 21-48. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM-IN-PART.¹

THE INVENTION

This invention is a:

method and system that can be used by one of a plurality of different trading partners. The system uses a software application specific to the retailer that allows extended data attributes to be defined and created specific to the needs of the trading partner as related to the description of the item, its pricing and promotion. Additionally, the invention maintains semblance of the standard and extended data as transmitted through a graphical user interface which keeps both the standard and extended attributes coupled together.

Specification [0017].

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

¹ Our decision will make reference to the Appellant's Appeal Brief ("Br.," filed Nov. 26, 2007) and the Examiner's Answer ("Answer," mailed Jan. 9, 2008).

1. A computer-based method for electronic communication between consumer goods trading partners, comprising:

providing a software application program which communicates between first and second trading partners over an electronic communication link;

inputting user-defined extended data attributes by the first trading partner into a plurality of tables through a graphical user interface, the tables including,

(a) a first table for providing extended data definitions of each extended data attribute, each extended data definition in the first table including an extended data definition identification field, extended data name field, extended data type field, extended data description field, extended entity type field, and unique link to the second trading partner,

(b) a second table for correlating each extended data type field used in the first table, the second table including an extended data type field, extended data type name field, and extended data type description field,

(c) a third table for correlating each extended entity type used in the first table, the third table including an extended entity type field and extended entity type name field, and

(d) a fourth table for correlating the extended data definition identification used in the first table, the fourth table including an entity owner of the extended data type definition and values for each extended data attribute;

transmitting standard data attributes to the second trading partner; and

transmitting the extended data attributes from the plurality of tables as an XML-message to the second trading partner.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Jain US 6,993,506 B2 Jan. 31, 2006

The Examiner took Official Notice that “that arrangement of data to influence speed is old and well known.” Answer 4.

The following rejection is before us for review:

1. Claims 1, 2, 6, 7, and 21-48 are rejected under 35 U.S.C. §103(a) as being unpatentable over Jain and Official Notice.

ISSUES

The first issue is whether claims 1, 2, 6, 7, and 21-39 are unpatentable under 35 U.S.C. § 103(a) over Jain and Official Notice. Specifically, the issue is whether the Examiner has established a prima facie showing that one of ordinary skill in the art would have been led by Jain and Official Notice to define the extended attribute data into first, second, third and fourth tables, that are structured to be capable of performing the functions recited in claim 1. The rejection of claim 41 also turns on this issue.

The second issue is whether claims 40, 42, and 43 are unpatentable under 35 U.S.C. § 103(a) over Jain and Official Notice. Specifically, the issue is whether one of ordinary skill in the art would have been led by Jain and Official Notice to define the extended data attributes in a plurality of tables.

The third issue is whether the Appellant has overcome the rejection of claims 44-48 under 35 U.S.C. § 103(a) over Jain and Official Notice.

FINDINGS OF FACT

We find that the following findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Jain describes a protocol for conveying data during an e-commerce session between a buyer and a supplier. Col. 1, ll. 36-41.

2. Jain states:

In this schema, the ResponseData element enables polymorphism of the session end data document. The extension of ResponseData is self-describing. That is, the basic attributes of ResponseData, which may be extended and adapted in various embodiments, describe the extended data attributes. Data type and version attributes allow the buyer application to determine what data is associated with the message. An optional data format attribute permits further definition of the data associated with the message. This is an extension of XML. The same message, with variants, can be adapted to a variety of functions, such as conveying reference to or the values of shopping cart data, conveying product configuration data, conveying tax calculation data or conveying shipping or foreign freight forwarding data. Use of a polymorphic data schema decouples programming from the evolution of document types and applications.

Col. 19, ll. 29-45.

3. Jain states: “At some sacrifice of general adaptability, the system identifier may be implicit in *the data tables* or program code used by the buyer or supplier applications or it may be

implicit in the choice of a narrower domain than the Internet.”

Col. 19, ll. 54-58 (emphasis added).

4. Jain states: “The broker looks up the URL of the selected service 732, gathers context data for use in the supplier session 733 and creates data structures to support the supplier session 734.” Col. 9, l. 40-col. 10, l. 2.
5. Jain states: “For example, a buyer can initiate a status inquiry or a purchase order start using data structures equivalent to ResponseData, in place of PassThroughData.” Col. 20, ll. 36-39.

ANALYSIS

The rejection of claims 1, 2, 6, 7, and 21-48 under §103(a) as being unpatentable over Jain and Official Notice.

Claims 1, 2, 6, 7, and 21-39

The Appellant argues that the Examiner has not established a prima facie showing that the tables as recited in claim 1 would have been obvious. Br. 12-16. Specifically, the Appellant argues that claim 1 requires a plurality of tables with a stated structure and that the Examiner does not assert that these claimed tables and their structure are obvious in view of Jain. Br. 15. The Examiner admits that Jain does not “specify the exact arrangement (tables) of the extended data attributes as claimed” (Answer 3) but concludes that “to arrange the data using any number or arrangement of tables depending on how fast the data would need to be accessed” (Answer 4) would be obvious. *See also* Answer 5.

Claim 1 recites a step of inputting user-defined extended data attributes into four tables that perform recited functions. For example, the first table is recited as being “for providing extended data definitions of each extended data attributes.” This requires the first table to have a structure that is capable of performing the function of providing extended data definition of each extended data attributes. *See In re Schreiber*, 128 F.3d 1473, 1477-78 (Fed. Cir. 1997) and *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971). While the Examiner broadly asserts that arranging the “data using any number or arrangement of tables” would have been obvious, the Examiner does not establish that tables structured to be capable of performing the recited functions are known or that one of ordinary skill in the art would have been led to arrange the data in Jain into tables having the required structure. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007); citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Therefore, we find that the Examiner has not established a prima face showing of obviousness in rejecting claim 1.

Independent claims 26 and 32 contain limitations similar to claim 1 and are rejected in the same manner as claim 1 (*See Answer 3-4*). For the same reasons as provided above, we find that the Examiner has not established a prima facie case of obviousness in rejecting claims 26 and 32 or their dependent claims 26-31, and 33-39.

Accordingly, we find that the Appellant has not overcome the rejection of claims 1, 26, and 32, and claims 2, 6, 7, and 21-39, dependent thereon, under § 103(a) as being unpatentable over Jain and Official Notice.

Claim 40

The Appellant argues claims 40, 42, and 43 as a group (Br. 33). We select claim 40 as the representative claim for this group, and the remaining claims 42 and 43 stand or fall with claim 40. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

To traverse the rejection of claim 40, the Appellant again argues that claim 1 requires a plurality of tables with a stated structure and that the Examiner does not assert that these claimed tables and their structures are obvious in view of Jain. Br 29-31. Specifically, the Appellant argues that:

The Final Office Action does not recites support for finding that using a plurality of tables with the characteristics claimed to keep both the standard and extended data attribute coupled together and to provide the functionality to maintain extended custom data about products would have been obvious to a person of ordinary skill in the art.

Br. 30-31. Further, the Appellant traversed the Examiner's finding that the differences between aspects of claim 40 and Jain are non-functional descriptive material. Br. 31-33.

First, we note that, unlike claims 1, 26, and 32, claim 40 does not require first, second, third and fourth tables for performing the recited functions, but merely requires that the extended data attributes be defined in "a plurality of tables." Claim 40 does not recite that the function of the tables is "to keep both the standard and extended data attribute coupled together" (Br. 30-31). Claim 40 does not require that the standard and

extended data attributes be coupled together or even be transmitted together. Claim 40 does not recite functions for the plurality tables like claim 1, but merely broadly requires that the extended data attributes be defined in a plurality of tables.

Jain describes data tables being used by the buyer or supplier applications (FF 1) and makes several mentions of data structures (FF 2-4). Given this, we find that Jain implies that the extended data attributes are defined in a plurality of tables. Therefore, we find that one of ordinary skill in the art would have been led by Jain and the Official Notice to define extended data attributes in a plurality of tables.

Second, with regard to issue of whether the differences between aspects of claim 40 and Jain are non-functional descriptive material, the Examiner asserted that the specific recitations of which extended data attributes are contained the tables was non-functional descriptive material (Answer 4). However, this issue is not pertinent to claim 40 since, unlike claim 1, claim 40 does not include this recitation.

Accordingly, we find that the Appellant has not overcome the rejection of claim 40, and claims 42 and 43, dependent thereon, under 35 U.S.C. § 103(a) as being unpatentable over Jain and Official Notice.

Claim 41

Dependent claim 41 further limits claim 40 by requiring the same first, second, third, and fourth tables including the same specific extended data attributes as required by claim 1. For the same reasons as with respect to claim 1 above, we find that the Examiner has not established a prima facie case of obviousness in rejecting claim 41. Accordingly, we find that the

Appellant has not overcome the rejection of claim 41 under 35 U.S.C. § 103(a) as being unpatentable over Jain and Official Notice.

Claim 44

The Appellant argues claims 44-48 as a group (Br. 37). We select claim 44 as the representative claim for this group, and the remaining claims 44-48 stand or fall with claim 44. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

As for the rejections of claims 1, 26, 32, and 40, the Appellant again argues that the prior art does not teach *a step* of using a plurality of tables to define the extended data attributes associated with a commercial transaction therein through a graphical user interface. *See* Br. 33-37. For example, the Appellant states: “Jain does not teach defining the extended data attributes . . .” (Br. 34) and “Claim 44 provides a method . . .” (Br. 35).

However, unlike claims 1, 26, 32, and 40; claim 44 is directed to an apparatus and not to a method. Independent claim 44 recites a system that includes “means for defining extended data attributes associated with the commercial transaction in a plurality of tables through a graphical user interface.” This limitation is recited as a means for performing a function.

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the *corresponding structure, material, or acts described in the specification and equivalents* thereof.

35 U.S.C. § 112 (6) (2002) (emphasis added). Therefore, this limitation encompasses the corresponding structure in the Specification and the equivalents. The limitation does not encompass the act or step of

performing the recited structure. Therefore, the Appellant's argument is directed to a subject matter not required by claim 44.

We note that the Appellant does not raise the issue of whether or not the prior art used in the Examiner's rejection teaches the corresponding structure or equivalents and, therefore, we will not review this issue.

Filing a Board appeal does not, unto itself, entitle an appellant to *de novo* review of all aspects of a rejection. If an appellant fails to present arguments on a particular issue – or, more broadly, on a particular rejection – the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection. . . Thus, the Board will generally not reach the merits of any issues not contested by an appellant.

In re Frye, 94 USPQ2d 1072, 1075 (BPAI 2010)(precedential).

Accordingly, we find that the Appellant has not overcome the rejection of claim 44, and claims 45-48, dependent thereon, under § 103(a) as being unpatentable over Jain and Official Notice.

CONCLUSIONS OF LAW

We conclude that the Appellant has overcome the rejection of claims 1, 2, 6, 7, 21-39 and 41 under 35 U.S.C. §103(a) as unpatentable over Jain and Official Notice.

However, the Appellant has not overcome the rejection of claims 40 and 43-48 under 35 U.S.C. §103(a) as unpatentable over Jain and Official Notice.

DECISION

The decision of the Examiner to reject claims 1, 2, 6, 7, 21-39 and 41 is reversed.

The decision of the Examiner to reject claims 40 and 43-48 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

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